

## subpart o – performance reviews

### 570.900 general

#### (a) Performance review authorities --

(1) Entitlement and HUD-administered Small Cities performance reviews. Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

(2) Urban Development Action Grant (UDAG) performance reviews. Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

#### (b) Performance review procedures. This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(e) and 119(g) of the Act:

(1) The Department will determine the performance of each entitlement and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in 570.901 and by applying the performance criteria described in 570.902 and 570.903 relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from monitoring, grantee and subrecipient audits, audits and surveys conducted by the HUD Inspector General, and financial data regarding the amount of funds remaining in the line of credit plus program income. HUD may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments, and other information provided by or concerning the recipient. A

recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

(4) If HUD determines that a recipient has not met a civil rights review criterion in [570.904](#), the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement.

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in [570.902](#) or [570.903](#), HUD will give the recipient an opportunity to provide additional information concerning the finding.

(6) If, after considering any additional information submitted by a recipient, HUD determines to uphold the finding, HUD may advise the recipient to undertake appropriate corrective or remedial actions as specified in [570.910](#). HUD will consider the recipient's capacity as described in [570.905](#) prior to selecting the corrective or remedial actions.

(7) If the recipient fails to undertake appropriate corrective or remedial actions which resolve the deficiency to the satisfaction of the Secretary, the Secretary may impose a sanction pursuant to [570.911](#), [570.912](#), or [570.913](#), as applicable.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995]

## 570.901 review for compliance with the primary and national objectives and other program requirements

HUD will review each entitlement and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

(a) The requirement described at [570.200](#)(a)(3) that, consistent with the primary objective of the Act, not less than 70 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low- and moderate-income persons;

(b) The requirement described at [570.200](#)(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at [570.208](#);

(c) All other activity eligibility requirements defined in [subpart C](#) of this part;

(d) For entitlement grants and HUD-administered small cities grants in Hawaii only, submission requirements of 24 CFR [part 91](#) and the displacement policy requirements at [570.606](#); \*

(e) For HUD-administered New York small cities grants only, the citizen participation requirements at [570.431](#), the amendment requirements at [570.427](#), and the displacement policy requirements of [570.606](#); \*

(f) The grant administration requirements described in [subpart J](#);

(g) Other applicable laws and program requirements described in [subpart K](#); and

(h) Where applicable, the requirements pertaining to loan guarantees ([subpart M](#)) and urban renewal completions (subpart N).

\* Adjusted from published regulation.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 60 FR 56917, Nov. 9, 1995]

## 570.902 review to determine if cdbg funded activities are being carried out in a timely manner

HUD will review the performance of each entitlement and HUD-administered small cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

(a) Entitlement recipients.

(1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the recipient is carrying out its activities in a timely manner pursuant to paragraph (a)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (a)(1) or (a)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard described in paragraph (a)(1) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made and other relevant information.

(b) HUD-administered Small Cities program. The Department will, absent substantial evidence to the contrary, consider that a HUD-administered small cities recipient is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995]

## 570.903 review to determine if the recipient is meeting its consolidated plan responsibilities

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR [part 91](#).

(a) Review timing and purpose. HUD will review the [consolidated plan](#) performance of each entitlement and Hawaii HUD-administered small cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR [91.225](#)(b)(3) to determine whether the recipient followed its HUD-approved consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet nonhousing community development needs.

(b) Following a [consolidated plan](#). The recipient will be considered to be following its consolidated plan if it has taken all of the planned actions described in its action plan. This includes, but is not limited to:

(1) Pursuing all resources that the grantee indicated it would pursue;

(2) Providing certifications of consistency, when requested to do so by applicants for HUD programs for which the grantee indicated that it would support application by other entities, in a fair and impartial manner; and

(3) Not hindering implementation of the [consolidated plan](#) by action or willful inaction.

(c) Disapproval. If HUD determines that a recipient has not met the criteria outlined in paragraph (b) of this section, HUD will notify the recipient and provide the recipient up to 45 days to demonstrate to the satisfaction of the Secretary that it has followed its **consolidated plan**. HUD will consider all relevant circumstances and the recipient's actions and lack of actions affecting the provision of assistance covered by the consolidated plan within its jurisdiction. Failure to so demonstrate in a timely manner will be cause for HUD to find that the recipient has failed to meet its certification. A complete and specific response by the recipient shall describe:

(1) Any factors beyond the control of the recipient that prevented it from following its **consolidated plan**, and any actions the recipient has taken or plans to take to alleviate such factors; and

(2) Actions taken by the recipient, if any, beyond those described in the consolidated plan **performance report** to facilitate following the consolidated plan, including the effects of such actions.

(d) New York HUD-administered Small Cities. New York HUD-administered grantees shall follow the provisions of paragraph (b) of this section for their abbreviated or full consolidated plan to the extent that the provisions of paragraph (b) of this section are applicable. If the grantee does not comply with the requirements of paragraph (b) of this section, and does not provide HUD with an acceptable explanation, HUD may decide, in accordance with the requirements of the notice of fund availability, that the grantee does not meet threshold requirements to apply for a new small cities grant.

[60 FR 56918; Nov. 9, 1995]

## 570.904 equal opportunity and fair housing review criteria

(a) General.

(1) Where the criteria in this section are met, the Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:

(i) There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by considerations of race, color, religion where applicable, sex, national origin, age or handicap, has treated some persons less favorably than others, or

(ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin, or

(iii) Where the Secretary required a further assurance pursuant to **570.304** in order to accept the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.

(2) In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under title VI of the Civil Rights Act of 1964 or section **109** of the Act.

(b) Review for equal opportunity. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1, together with section **109** of the Act (see **570.602**), prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

(The above streamlined text replaced the following language:  
Section 570.601(a) sets forth the general requirements for title VI of the Civil Rights Act of 1964 and 570.602 sets forth the general requirements for section 109 of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.)

(1) Review for equal employment opportunity. The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment, promotion, or training opportunities by a recipient to any person within the meaning of section **109**. The extent to which persons of a particular race, gender, or ethnic background are represented in the workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(2) Review of equal opportunity in services, benefits and participation. The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section **109**. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(c) Fair housing review criteria. See the requirements in the Fair Housing Act (42 U.S.C. 3601-20), as well as **570.601(a)**, which sets forth the grantee's responsibility to certify that it will affirmatively further fair housing.

(The above streamlined text replaced the following language:

Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601-3620) and the grantee's certification that it will affirmatively further fair housing.)

**(d)** Actions to use minority and women's business firms. The Department will review a recipient's performance to determine if it has administered its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises described in Executive Orders 11625, 12432 and 12138, and 24 CFR 85.36(e). In making this review, the Department will determine if the grantee has taken actions required under 85.36(e) of this chapter, and will review the effectiveness of those actions in accomplishing the objectives of 85.36(e) of this chapter and the Executive Orders. No recipient is required by this part to attain or maintain any particular statistical level of participation in its contracting activities by race, ethnicity, or gender of the contractor's owners or managers.

[53 FR 34466, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 9, 1989; 60 FR 1917, Jan. 5, 1995; 61 FR 11482, Mar. 20, 1996]

## 570.905 review of continuing capacity to carry out cdbg funded activities in a timely manner

If HUD determines that the recipient has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in [570.901](#) or [570.902](#), HUD will undertake a further review to determine whether or not the recipient has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken and the success or likely success of such actions.

## 570.906 review of urban counties

In reviewing the performance of an urban county, HUD will hold the county accountable for the actions or failures to act of any of the units of general local government participating in the urban county. Where the Department finds that a participating unit of government has failed to cooperate with the county to undertake or assist in undertaking an essential community development or assisted housing activity and that such failure results, or is likely to result, in a failure of the urban county to meet any requirement of the program or other applicable laws, the Department may prohibit the county's use of funds made available under this part for that unit of government. HUD will also consider any such failure to cooperate in its review of a future cooperation agreement between the county and such included unit of government described at [570.307](#)(b)(2).

## 570.907

[Reserved]

## 570.908



[Reserved]

## 570.909

[Reserved]

## 570.910 corrective and remedial actions

**(a)** General. Consistent with the procedures described in 570.900(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency.

**(b)** Actions authorized. The following lists the actions that HUD may take in response to a deficiency identified during the review of a recipient's performance:

**(1)** Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;

**(2)** Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:

**(i)** Preparing and following a schedule of actions for carrying out the affected CDBG activities, consisting of schedules, timetables and milestones necessary to implement the affected CDBG activities;

**(ii)** Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;

**(iii)** For entitlement recipients, canceling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in 24 CFR Part 91); or

**(iv)** Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;

**(3)** Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;

**(4)** Advise the recipient to suspend disbursement of funds for the deficient activity;



(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to subpart B of 24 CFR part 17; and

(8) In the case of an entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to [570.304](#)(d). The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to [570.911](#), of the entitlement recipient's annual grant by up to the amount conditionally granted.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995]

## 570.911 reduction, withdrawal, or adjustment of a grant or other appropriate action

(a) Opportunity for an informal consultation. Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) Entitlement grants. Consistent with the procedures described in [570.900](#)(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) HUD-administered small cities grants. Consistent with the procedures described in [570.900](#)(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) Urban Development Action Grants. Consistent with the procedures described in [570.900](#)(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

## 570.912 nondiscrimination compliance

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with [570.602](#), the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the

governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

- (1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
- (2) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);
- (3) Exercise the powers and functions provided for in **570.913**; or
- (4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of **570.602**, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

## 570.913 other remedies for noncompliance

(a) Action to enforce compliance. When the Secretary acts to enforce the civil rights provisions of Section **109**, as described in Sec. **570.602** and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

- (1) Terminate payments to the recipient
- (2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or
- (3) Limit the availability of payments to programs or activities not affected by such failure to comply.

Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditures of funds for activities affected by such failure to comply.

(b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this Part;

- (1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

**(2)** Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with it, or for mandatory or injunctive relief;

**(c)** Proceedings. When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:

**(1)** Notice of opportunity for hearing. The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

**(i)** Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this part;

**(ii)** State that the hearing procedures are governed by these rules;

**(iii)** State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed;

**(iv)** Specify the action which the Secretary proposes to take and that the authority for this action is section **111(a)** of the Act;

**(v)** State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

**(vi)** Be sent to the respondent by certified mail, return receipt requested.

**(2)** Initiation of hearing. The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.

**(3)** Administrative Law Judge. Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

**(i)** Administer oaths and affirmations;

- (ii)** Issue subpoenas as authorized by law;
- (iii)** Rule upon offers of proof and receive relevant evidence;
- (iv)** Order or limit discovery prior to the hearing as the interests of justice may require;
- (v)** Regulate the course of the hearing and the conduct of the parties and their counsel;
- (vi)** Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (vii)** Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and
- (viii)** Make and file initial determinations.

**(4)** Ex parte communications. An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

**(5)** The hearing. All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

**(6)** Transcripts. Hearing shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

**(7)** The ALJ's decision. At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement

of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

**(8)** The record. The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

**(9)** Review by the Secretary. The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

**(10)** Judicial review. The respondent may seek judicial review of the Secretary's decision pursuant to section **111(c)** of the Act.